RESOURCE MANAGEMENT (MARINE FARMING AND HERITAGE PROVISIONS) AMENDMENT BILL

AS REPORTED FROM THE TRANSPORT AND ENVIRONMENT COMMITTEE

COMMENTARY

Recommendation

The Transport and Environment Committee has examined the Resource Management (Marine Farming and Heritage Provisions) Amendment Bill and recommends that it be passed with the amendments shown in the bill.

Summary

Provisions in this bill were previously contained in the Resource Management Amendment Bill (No. 3). They relate to marine farming and to heritage protection. The following is a brief summary of these provisions and our recommendations in respect of them.

Marine farming provisions

As referred to the committee, the provisions which related to marine farming repeal the Marine Farming Act 1971 and "grandparent" existing lease and licence holders under that Act into the Resource Management Act 1991 (the RMA). Existing leases and licences are deemed to be coastal permits. Lease and licence holders are deemed to have marine farming permits and spat catching permits under the Fisheries Act 1983. A number of provisions relating to the ongoing management of marine farming are carried over from the Marine Farming Act 1971 into the Fisheries Act 1983.

We recommend that the provisions in this bill relating to marine farming proceed with similar amendments to those recommended by the previous Planning and Development Committee. In our view, these changes should not wait until a full review of the legislation relating to the aquaculture industry has taken place. We consider that the provisions in this bill may be enacted without affecting the process of resolving the complex issues that exist in the area of customary ownership of foreshore and seabed.

Price Code: K

Heritage protection provisions

Other provisions relate to Part VIII of the Resource Management Act 1991, which sets out the process for protecting heritage places by heritage orders. The proposals exclude water bodies from the range of places that a heritage order can be placed over, and set out a decision-making framework for heritage orders made by body corporate heritage protection authorities, which differs from that for orders made by other heritage protection authorities.

We recommend that the provision excluding water bodies from the definition of "place" be passed. On the other hand, we also recommend that the proposed change to the decision-making framework for heritage orders not proceed, as such processes are under consideration as part of the review of historic heritage management, which is nearing completion.

Conduct of the examination

Previous consideration of Resource Management Amendment Bill (No. 3)

The Resource Management (Marine Farming and Heritage Provisions) Amendment Bill consists of a number of provisions divided from the Resource Management Amendment Bill (No. 3). The latter generally amended the Resource Management Act 1991, and was introduced during the previous Parliament and referred to the Planning and Development Committee on 14 December 1995. Supplementary Order Paper No. 179, which related to that bill, was subsequently referred by the House, with the instruction that the committee have the power to adopt the amendments set out in the supplementary order paper.

On 16 August 1996, the Planning and Development Committee presented a report (141–2A) on a number of clauses divided from the Resource Management Amendment Bill (No. 3) to form what was later enacted as the Resource Management Amendment Act 1996 (1996, No. 160). The Planning and Development Committee's report on the rest of the bill (141–2) was presented on 30 August 1996. In that report, a number of amendments were recommended by the committee by majority.

Bill referred back to select committee

On 5 November 1997, the House referred the Resource Management Amendment Bill (No. 3) to the Transport and Environment Committee for further consideration without having adopted the amendments recommended by the Planning and Development Committee. Supplementary Order Paper No. 179 was subsequently also referred to us (on 9 December 1997), and we were authorised to adopt the amendments set out in the supplementary order paper.

We divided the bill further, having decided that a number of provisions had been fully discussed by the Planning and Development Committee and should not be delayed by further select committee consideration. These provisions were included in our report on the Resource Management Amendment Bill (No. 3) (141–3), which was presented to the House on 1 December 1997, and formed what was later enacted as the Resource Management Amendment Act 1997 (1997, No. 104). We retained the remainder of that bill for consideration as the Resource Management (Marine Farming and Heritage Provisions) Amendment Bill.

Amendments based on report of previous committee

The relevant provisions have been considered as they appeared in the previous report on the Resource Management Amendment Bill (No. 3) by the Planning and

Development Committee (141–2). They are clauses 16, 32 to 36, 62, 72, 74 and 82, proposed new clauses 18A, 26A, 27 (2), 83C and 84, 84A, 85 to 102, and the proposed new Schedule. While the amendments proposed in this report relate to the bill as introduced, as this was the form in which it was actually referred to our committee by the House, they generally do reflect the amendments recommended by the previous committee.

Our consideration of the bill

After the Resource Management (Marine Farming and Heritage Provisions) Amendment Bill had been divided from the previous bill, we decided to seek further submissions on these provisions. The closing date for submissions was 5 February 1998. We received and considered 37 submissions from interested groups and individuals. We heard 23 submissions orally. The hearing of evidence took eight hours and 20 minutes, and our consideration took a further eight hours and 30 minutes.

We received advice from the Ministry for the Environment and the Ministry of Fisheries.

This commentary sets out the details of our consideration and the major issues we addressed. Further information about these provisions may be found in the previous Planning and Development Committee's commentary on its report on the Resource Management Amendment Bill (No. 3) (141–2). That commentary has been reproduced in the compendium volume of 1996 Reports of Select Committees (starting on page 561).

Marine farming provisions

Current situation

There are currently two different regimes under which marine farming is operating:

- The Marine Farming Act 1971 still applies to those marine farms which were established or were in the process of applying for leases or licences before the RMA came into force on 1 October 1991.
- The joint RMA and the Fisheries Act 1983 regime applies to those farms that were established after the RMA was enacted. The RMA covers coastal permits and the Fisheries Act 1983 covers marine farming and spat catching permits.

The particular regime each farm falls under is determined by the commencement date of the RMA (1 October 1991). Any individual farmer may be operating under one or both regimes. Farmers who have more than one farm each could find they have different regimes applying for their separate farms, even if these operations are adjacent to each other.

As regional coastal plans have become operative, the farms that operate under the RMA and the Fisheries Act 1983 have been covered by the plans, but the older farms have not. This dual regime has been creating problems in terms of managing the coastal marine area in an integrated way.

Provisions in the bill

The intention of the provisions of this bill is to end this dual system whereby two different regimes regulate the same types of activities. The Marine Farming Act 1971 is repealed and existing lease and licence holders under that Act are "grandparented" into the RMA and the Fisheries Act 1983. Existing leases and licences are deemed to be coastal permits under the RMA and marine farming permits and spat catching permits under the Fisheries Act 1983.

A number of provisions from the Marine Farming Act 1971, which are necessary for ongoing management of marine farming, are carried over into the Fisheries Act 1983. The bill also includes a number of amendments to the Fisheries Act 1983, which are added to improve the operations of the marine farm permit system.

Claim for customary ownership of foreshore and seabed

The issue of customary ownership of the foreshore and seabed is currently before the Māori Appellate Court. A claim has been made by eight iwi from the Marlborough and Nelson region, who are seeking a declaration that their customary ownership of the foreshore and seabed in and around the Marlborough Sounds was not extinguished by the signing of the Treaty of Waitangi in 1840. In a decision given on 22 December 1997, the Māori Land Court found that it has jurisdiction to determine an application for customary ownership, but that evidence would be needed to prove existence in any given area.

The Crown and a number of parties have appealed this decision. The resolution of this case is expected to be some time away. Other claims of a similar nature have also been lodged.

The determination of whether customary ownership of the foreshore and seabed still exists is an extremely important issue. For the reasons set out below, we do not consider or intend that this bill should affect the consideration of this claim (or other claims) by the courts.

Review of Fisheries Act 1996

A number of submissions called for the marine farming provisions in the bill to be abandoned and for a comprehensive review of aquaculture to be conducted. The Treaty of Waitangi Fisheries Commission (Te Ohu Kai Moana), supported by a number of submissions from tangata whenua, had suggested this course of action when the bill was first introduced and continued to hold this view. The marine farming industry, which initially supported the bill, withdrew support for the "grandparenting" proposal after the report of the previous committee, and also proposed that a full review be undertaken.

When the bill was referred to our committee in November 1997, we were advised that such a review was still some time away. However, early in 1998 the Minister of Fisheries commissioned an independent review of the Fisheries Act 1996. This provided an opportunity to review aquaculture legislation.

In September 1998, the report on the independent review of the Fisheries Act 1996 was provided to the Minister of Fisheries. In respect of aquaculture, the report identified a need for amendments to the Fisheries Act 1996 to integrate more effectively the rights and responsibilities of the aquaculture sector with those associated with wild fisheries and to minimise the aquaculture sector's costs of complying with the legislation.

Full review of aquaculture is anticipated

Following the report, and subsequent papers prepared by officials, Cabinet agreed (on 2 November 1998) that proposals for the reform of the management regime for aquaculture should be the subject of public consultation. It was indicated that the approval of a consultation document and the receipt and analysis of public submissions might occur in time for officials to report to the relevant Ministers in August 1999. However, this public consultation process has not yet been progressed. It now appears that the reform of aquaculture legislation may not take place for some time.

Application of RMA and Fisheries Act to all marine farms should not wait

Once the question of customary ownership of the foreshore and seabed has been decided and a full review of aquaculture has been conducted, legislation may be introduced to bring marine farming under a comprehensive regime. However, we consider that these complex issues will take a significant period of time to resolve, and that it is timely for the authorisation and environmental effects of all marine farms to be brought under the RMA and the Fisheries Act 1983.

Since some future reform of legislation relating to aquaculture will probably make profound changes to the management of marine farming, the amendments set out in this bill may be seen as an interim measure. On the other hand, we consider that they represent a significant and desirable development, particularly since it may be some years before the new regime is finalised.

General support for addressing environmental effects under RMA

Irrespective of the outcome of the review of aquaculture legislation, environmental effects of marine farming activities are likely to remain under the RMA. This statute deals with all activities under the same regime so that the management of resources is integrated and comprehensive.

The exclusion of small parts of the coastal marine area from the RMA management regime poses a problem for integrated management, especially when the particular resource is the very mobile seawater medium. The effects of marine farms go beyond the actual occupied space because of the currents and flushing of the sea. For example, feeding of some species and some chemical treatments can give rise to effects that require management.

At the immediate location of a marine farm, structures give rise to visual and amenity effects. These effects are addressed by the RMA, except for the pre-1991 farms which have not so far been brought under the jurisdiction of the Act. In comparison, marine farms established since the commencement of the RMA may have conditions related to controlling the effects of structures, as with other coastal uses, such as marinas.

During the hearing of evidence on these provisions in 1998, the majority of submissions expressed opposition to the bill. However, when asked, none of those presenting the submissions were opposed to the addressing of environmental effects arising from marine farming under the RMA. There was general agreement that the deeming of conditions or activities associated with marine farming as coastal permits under that Act would be acceptable.

Opposition to bill related primarily to occupation of coastal environment

The main issue raised in submissions centred on the occupation of the coastal environment. Several submissions were concerned that we should not make a decision on occupation of coastal space until the claim for customary ownership of the foreshore and seabed is settled. Other submissioners were concerned that their anticipated rights under the Marine Farming Act 1971 to occupation would be extinguished.

Claims for customary ownership not affected by occupation of space provisions

In relation to the concern that the bill may affect the determination of customary title, a distinction needs to be drawn between ownership of resources and occupation. The RMA is concerned with managing the environmental effects of activities, irrespective of the ownership of the resource. For comparison, terrestrial land, which is mostly in private ownership, still falls under the jurisdiction of the Act for the management of adverse effects on the environment.

In the coastal marine area, sections 12 (1) and 12 (3) of the RMA restrict activities—to address environmental effects—separately from the occupation of space. Section 12 (2), which prevents the occupation of parts of the coastal marine area unless it is expressly allowed by a rule in a regional coastal plan (or proposed plan), specifically states that it deals only with "land of the Crown in the coastal marine area" or land in the coastal marine area vested in a regional council.

Where ownership of an area of foreshore or seabed is vested in an iwi (or any other person or organisation), through whatever process, section 12 (2) of the RMA would not apply to that area. On the other hand, if land in the coastal marine area is found not to be in the ownership of the Crown, activities and adverse effects there would still be restricted under sections 12 (1) and 12 (3).

The "grandparenting" provisions in this bill should not alter the opportunities available to the Crown to use areas of foreshore and seabed for the settlement of grievances. If land is already occupied and the Crown wishes to use the land for settlements, then it would need to pass legislation to ensure existing permits in respect of that land expire and to prevent the granting of further permits or extensions. This is the case whether the authorisation to occupy is a lease or licence under the Marine Farming Act 1971 or a coastal permit under the RMA.

Recognition of customary fishing and ownership interests

It has been suggested that the "grandparenting" proposal further entrenches a management system that may not adequately recognise Māori customary fishing or ownership interests in an area. When space is allocated under the RMA, it can limit or prevent Māori from exercising customary food-gathering or use rights.

There are a number of provisions within the RMA to protect iwi interests. Regional councils must recognise and provide for "the relationship of Māori and their culture and traditions with their ancestral lands, water, sites, waahi tapu, and other taonga" as a matter of national importance. This imposes an explicit obligation on councils. There are also requirements on councils to consult with iwi and to state the matters of resource management significance to iwi in their regional plans.

During consultation on the preparation of coastal plans, iwi have been encouraged to identify areas of particular importance for customary fishing. Such input will ensure that regional councils are aware of important areas (particularly those over which mataitai reserves or taiapure applications are likely to be made) and that coastal plans contain policies and rules that are consistent with the likely fisheries management objectives for those areas.

Treaty of Waitangi clause not necessary

We consider that tangata whenua have a distinct relationship with land and sea. The RMA recognises this particular relationship through terms such as kaitiakitanga and mana whenua, which are accorded to tangata whenua only.

Submissions from iwi suggested that, if the bill were to proceed, a clause should be inserted to affirm the application of the Treaty of Waitangi to these provisions and to state that they do not affect any claim for customary ownership of the foreshore or seabed.

In our view, such a clause is not necessary. As set out above, the question of who owns the foreshore or seabed is not affected by this bill: if an area of seabed is found not to be owned by the Crown or vested in a regional council, the provisions in the RMA relating to occupation do not apply; and environmental effects are addressed regardless of ownership. A requirement to take into account

the principles of the Treaty of Waitangi already exists in the RMA (section 8), and this will apply equally to new provisions contained in this bill.

Length of terms

The Marine Farming Act 1971 provides that the term of a lease or licence is not to exceed 14 years. A lease or licence may contain a right of renewal for one or more terms. This can be contrasted with a coastal permit under the RMA, which can have a maximum term of 35 years, although the length of the term is a matter at the discretion of the consent authority. Under the Fisheries Act 1983, the term for a marine farming permit is the same as the coastal permit (section 67N).

This bill proposes that the term for new deemed coastal permits will equal the current term of the lease or licence plus 14 years, with the limitation that the term not exceed 20 years from the date of the commencement of the amendment. Some "grandparented" marine farms will therefore receive a term that is longer than they currently hold, although the advantage varies depending upon when the actual lease or licence under consideration is due to expire. The advantage that farmers may gain from this new term will be offset by the fact that, at its eventual expiry, a new permit must be sought.

Perceived limitation of occupation rights

Submissions from marine farmers expressed concern that their rights to occupation of coastal space are being limited. There is a perception that marine farmers have a perpetual occupation right. This perception arises because marine farmers who have leases and licences under the Marine Farming Act 1971 may apply for an extension of the term for these leases and licences. So far, such extensions have never been refused. This experience has meant an expectation has developed in the industry that extensions are likely to be granted on an ongoing basis, and this has been interpreted as a granting of a perpetual occupation right. We have been advised that this is not the case, despite the perception.

The RMA does not diminish rights of lease and licence holders to exclusive occupation of space; in fact the definition of "occupy" in section 12(4) does provide for the exclusion of other persons. This right will apply for both lease and licence holders. There will be no diminution of rights for the holders of leases under the Marine Farming Act 1971 and, as licences under that Act do not currently provide for the exclusion of other persons, it could be argued that the occupation rights of licence holders may actually be increased by this bill.

Preferential right to apply for new coastal permit for occupation

As introduced, clause 16 of this bill gave a perpetual preferential right to reapply for permits to occupy coastal space in respect of both "grandparented" marine farms and those already operating under the RMA. This preferential right did not allocate permanent rights of occupation to marine farmers or guarantee that a consent would be granted or that it would be on the same conditions as the existing one.

We concur with the decision of the previous committee that a perpetual preferential right to reapply for such permits is not appropriate. No other holders of resource consents under the RMA have preferential rights to apply for those consents to be renewed. Marine farmers currently holding coastal permits under the RMA do not have such a right, and, in our view, it should not be allocated permanently to "grandparented" marine farms either. However, we do recommend the retention of the transitional provision recommended by the

previous committee (in proposed new section 426A inserted by clause 72), which gives holders of deemed coastal permits a single preferential right to apply for a new coastal permit for occupation.

Possible introduction of perpetual harvesting rights

Cabinet papers relating to the review of the Fisheries Act 1996 describe a new "marine farm harvesting right", which may be allocated in perpetuity. This would mean that each marine farming right holder would have the exclusive right to farm in a particular area, providing he or she wishes to retain the marine farming right, although it would not confer the right to establish structures. The duration and conditions of establishing structures, as opposed to harvesting, would continue to be determined under the RMA.

While it is too early in the review process to make a full assessment of this concept, we are not entirely comfortable with the allocation (or perceived allocation) of rights in perpetuity. This view is consistent with our approach set out above in relation to the proposed preferential right to apply for new coastal permits.

Further minor amendments recommended

When the Resource Management Amendment Act 1996 was passed by the House after being split from the Resource Management Amendment Bill (No. 3), it included a provision (section 23 (2)) which removed from section 418 of the RMA the saving for existing permitted uses in the case of leases and licences under the Marine Farming Act 1971. This section had been part of this package of "grandparenting" provisions, and was not intended to be passed until the enactment of the rest of the marine farming package. It adversely affected those persons who had not renewed or extended expired leases or licences and who were relying solely on section 418 to allow them to continue their marine farming activities.

The Resource Management Amendment Act 1997 repealed and nullified the effect of section 23 (2) of the previous amendment Act, so that the leases and licences concerned could be treated as having continued to apply.

Now that the full package of marine farming provisions is to proceed, the interim position created by the Resource Management Amendment Act 1997 will now need to be reversed. Therefore, we recommend that the bill be amended so that the effect originally set out in section 23 (2) of the Resource Management Amendment Act 1996 will be reinstated. We also recommend amendments to clarify that the changes apply to leases and licences in operation at the commencement of these provisions. This will be achieved through new clause 67B, changes to clause 72 (including a redrafted section 426 (1) and the redrafting of proposed subsection (3) (a) of that section).

Proposed new subclause (2) of clause 27 (relating to the application of Orders in Council), which had been "orphaned" by a previous split of the bill, is now new clause 27AA. An amendment is to be made to proposed new clause 84A, to take account of a new regulation made since the previous report was made on these provisions.

Except as set out above, we repeat the unadopted amendments recommended by the previous Planning and Development Committee when it reported on the Resource Management Amendment Bill (No. 3) (141–2).

Heritage provisions

Exclusion of water bodies from definition of "place"

It was not anticipated that the heritage order process would be used over very large areas (for example over rivers or mountains), but it has become apparent that the breadth of the provisions in the RMA means that potentially they may be used in this way. In order to clarify the types of places heritage orders could be used for, the amendment in clause 32, as introduced, aims to exclude water bodies from the definition of "place". We have been advised by officials that this would better reflect the original intention of the Act. Part IX of the Act provides for water conservation orders for the purpose of protecting the characteristics of water bodies of outstanding significance.

We also note that the proposed amendment is intended to address a legal difficulty arising from the making of heritage orders in respect of water bodies. When a heritage order is made, it is included in the relevant district plan. However, while district plans relate to activities conducted on dry land or on the surface of water bodies, any disturbance to the bed of a river or lake, or to any aquatic organisms, can be restricted only under a regional plan. The district council has only a very limited role for beds of rivers and lakes. The jurisdiction over the actual water rests with the regional councils. The placement of heritage orders over water bodies therefore may render uncertain the respective roles of the relevant district and regional councils.

Submissions from iwi were concerned that the proposed amendment would restrict their ability to become heritage protection authorities for the purposes of managing and protecting water bodies that are taonga of spiritual significance. We acknowledge that iwi as kaitiaki may see the heritage order process as a way of gaining some direct management over resources of importance to them.

We consider that water conservation orders are the appropriate mechanism to protect water bodies under the RMA, and that their ability to address the concerns of iwi should not be dismissed. Section 199 (2) of the RMA states that water conservation orders may provide for the protection of characteristics of water bodies for recreational, historical, spiritual, or cultural purposes, or where they are of outstanding significance in accordance with tikanga Māori.

We therefore recommend that clause 32 be passed without amendment.

Decisions on heritage orders

Under the RMA, a heritage protection authority may serve a requirement for a heritage order on the relevant territorial authority. After receiving public submissions on the requirement, the territorial authority recommends that the requirement be confirmed, with or without modifications or conditions, or that it be withdrawn. The heritage protection authority then decides whether to accept or reject the recommendations of the territorial authority, and may include the heritage order in the district plan. This decision may be appealed to the Environment Court.

Clauses 34 and 74 set out a decision-making framework for heritage orders made by body corporate heritage protection authorities which would differ from that for orders made by other heritage protection authorities. Clauses 33, 35 and 36 incorporate consequential amendments as a result of these proposed changes. The effect of these provisions, as introduced, would be to shift final responsibility for granting or refusing requirements for heritage orders from body corporate heritage protection authorities to territorial authorities. Where the heritage protection authority is a public body (a Minister of the Crown, a local authority, or

the Historic Places Trust) rather than a body corporate, the final decision would still rest with that heritage protection authority, and the territorial authority would retain its recommendation role.

Since these provisions were introduced to the House as part of the Resource Management Amendment Bill (No. 3) in December 1995, the Government has initiated a review of historic heritage management. The scope of the review is to consider policy and legislation relating to land-based historic and cultural heritage, including buildings, places and areas, archaeological sites, waahi tapu and sites of significance to Māori. Regulatory protection under the RMA is part of the review.

Since this review is now well advanced, we consider that it is not appropriate to pursue the changes to the RMA with regard to corporate heritage protection authorities until such time as this review is completed.

We therefore recommend that clauses 33 to 36 and 74 be omitted from the bill.

KEY TO SYMBOLS USED IN REPRINTED BILL

AS REPORTED FROM THE TRANSPORT AND ENVIRONMENT COMMITTEE

Struck Out (Unanimous) Subject to this Act,	Text struck out unanimously
New (Unanimous) Subject to this Act,	Text inserted unanimously
(Subject to this Act,)	Words struck out unanimously
Subject to this Act,	Words inserted unanimously
. . . . .	Indicates text forming Resource Management Amendment Bill (No. 3) 1995

Hon. Simon Upton

RESOURCE MANAGEMENT (MARINE FARMING AND HERITAGE PROVISIONS) AMENDMENT

ANALYSIS

A BILL INTITULED

An Act to amend those provisions of the Resource Management Act 1991 relating to marine farming and heritage protection

BE IT ENACTED by the Parliament of New Zealand as follows:

1. Short Title and commencement—(1) This Act may be cited as the Resource Management (Marine Farming and Heritage Provisions) Amendment Act **1997**, and is part of the Resource Management Act 1991 ("the principal Act").

(2) This Act comes into force on the day on which it receives the Royal assent.

. . . . .

Struck Out (Unanimous)

16. Preferential right for marine farmers to apply for new coastal permit for occupation—Section 88 of the principal Act is hereby amended by inserting, after subsection (2), the following subsections:

"(2A) Where—

"(a) Any person is the holder of a coastal permit to do something that would otherwise contravene section 12 (2) (a); and

"(b) That person is carrying on a marine farming activity in the area to which the coastal permit relates—

no person, other than the consent holder, shall apply for a coastal permit to occupy the area to which that coastal permit relates unless—

"(c) The consent holder has consented, in writing, to the application; or

"(d) The coastal permit has expired and—

"(i) The consent holder has not applied for a new coastal permit for occupation of the same area for the purposes of carrying on a marine farming activity; or

"(ii) The consent holder has applied for a new coastal permit for that same area, but that application has been refused by the consent authority and all appeals against the decision of the

Struck Out (Unanimous)

consent authority have been withdrawn or dismissed; or

"(e) The coastal permit has lapsed under section 125; or

"(f) The coastal permit has been cancelled under section 126.

"(2B) For the purposes of subsection (2A) the term 'marine farming' has the same meaning as in section 2 (1) of the Fisheries Act 1983."

. . . . .

New (Unanimous)

18A. Notification of applications—Section 93 (1) (d) of the principal Act is amended by omitting the words "the Marine Farming Act 1971, or".

. . . . .

New (Unanimous)

26A. Surrender of consent—(1) Section 138 of the principal Act is amended by inserting, after subsection (1), the following subsection:

"(1A) The written notice must either—

"(a) Include a declaration by the consent holder that—

"(i) The resource consent is not subject to a charge granted under section 122 (3); and

"(ii) The consent does not affect any marine farming permit granted under the Fisheries Act 1983, or that any affected marine farming permit is not subject to any charge or subpermit; or

"(b) Include a statement that—

"(i) The resource consent is subject to a charge under section 122 (3); and

"(ii) If appropriate, any affected marine farming permit is subject to a charge or a subpermit under Part IVA of the Fisheries Act 1983,—

New (Unanimous)

but that each affected charge holder or subpermit holder consents to the surrender, in which case the notice must be accompanied by the written consent of each such charge holder or subpermit holder."

(2) Section 138 of the principal Act is amended by inserting, after subsection (2), the following subsection:

"(2A) A consent authority must refuse to accept the surrender of a resource consent if the consent holder fails to either—

"(a) Make the declaration referred to in **subsection (1A) (a)**; or

"(b) Provide the consent authority with all written consents required by **subsection (1A) (b)**."

. . . . .

New (Unanimous)

27AA. Application of Order in Council—Section 153 (e) (ii) of the principal Act is amended by omitting the words "or section 426".

. . . . .

32. Application to become a heritage protection authority—Section 188 (2) of the principal Act is amended by adding the words "; but does not include any water body."

Struck Out (Unanimous)

33. Further information, public notification, submissions, and hearing—Section 190 of the principal Act is hereby amended by repealing paragraph (e), and substituting the following paragraph:

"(e) To a decision on the application for a resource consent were a reference to a recommendation or a decision by the territorial authority under **section 191A or section 191B**."

Struck Out (Unanimous)

34. New sections substituted—(1) The principal Act is hereby amended by repealing section 191, and substituting the following sections:

"191. **Matters to consider**—(1) Subject to Part II, when considering a requirement made under section 189, a territorial authority shall have regard to the matters set out in the notice given under section 189 (together with any further information supplied under section 190), and all submissions, and shall also have particular regard to—

"(a) Whether the place merits protection; and

"(b) Whether the requirement is reasonably necessary for protecting the place to which the requirement relates; and

"(c) Whether the inclusion in the requirement of any area of land surrounding the place is necessary for the purpose of ensuring the protection and reasonable enjoyment of the place; and

"(d) All relevant provisions of any national policy statement, New Zealand coastal policy statement, regional policy statement, proposed regional policy statement, regional plan, proposed regional plan, district plan, or proposed district plan; and

"(e) Section 189 (1); and

"(f) As appropriate, management plans or strategies approved under any other Act which relates to the place.

"191A. **Recommendation by territorial authority**—(1) After considering a requirement made under section 189 by a heritage protection authority as defined by paragraph (a) or paragraph (b) or paragraph (c) of the definition of the term 'heritage protection authority' in section 187, the territorial authority may recommend—

"(a) That the requirement be confirmed, with or without modifications; or

"(b) That the requirement be withdrawn.

"(2) In recommending the confirmation of a requirement under **subsection (1) (a)**, the territorial authority may recommend the imposition of—

Struck Out (Unanimous)

"(a) A condition that the heritage protection authority reimburse the owner of the place for any additional costs of upkeep of the place required as a result of the making of the heritage order:

"(b) Such other conditions as the territorial authority considers appropriate.

"(3) The territorial authority shall give reasons for a recommendation made under **subsection (1)**.

"191B. **Decision by territorial authority**—(1) After considering a requirement made under section 189 by a heritage protection authority as defined by paragraph (d) of the definition of the term 'heritage protection authority' in section 187, the territorial authority may grant the requirement, with or without modifications, or refuse the requirement.

"(2) In granting the requirement under **subsection (1)**, the territorial authority may impose—

"(a) A condition that the heritage protection authority reimburse the owner of the place for any additional costs of upkeep of the place required as a result of the making of the heritage order:

"(b) Such other conditions as the territorial authority considers appropriate.

"(3) The territorial authority shall give reasons for a decision made under **subsection (1)**."

(2) Section 104 of the Resource Management Amendment Act 1993 is hereby consequentially repealed.

35. Application of other sections to recommendations—Section 192 of the principal Act (as amended by section 189 of the Resource Management Amendment Act 1993) is hereby amended—

(a) By inserting, after the words "section 189A", the words "by a heritage protection authority as defined by paragraph (a) or paragraph (b) or paragraph (c) of the definition of the term 'heritage protection authority' in section 187":

(b) By inserting, after the term "section 191", the words "and **section 191A**".

Struck Out (Unanimous)

36. Application of other sections to decisions—The principal Act is hereby amended by inserting, after section 192, the following section:

"192A. The following sections shall, with all necessary modifications, apply in respect of a requirement under section 189 by a heritage protection authority as defined by paragraph (d) of the definition of the term 'heritage protection authority' in section 187 as if the heritage protection authority was a requiring authority, the heritage order was a designation, any references to a decision made by a requiring authority under section 172 were references to a decision made under **section 191B**, and any references to any persons who made submissions include a reference to the heritage protection authority:

"(a) Section 173, which relates to public notification of decisions of requiring authorities:

"(b) Section 174, which relates to appeals against such decisions:

"(c) Section 175, which relates to the provision of designations in district plans:

"(d) Section 180, which relates to the transferability of designations:

"(e) Section 181, which relates to the alteration of designations."

. . . . .

62. Existing applications for marine farming leases—Section 397 (1) (f) of the principal Act is amended by omitting the expression "(1), (4), and (5)".

. . . . .

New (Unanimous)

67B. Certain existing permitted uses may continue—Section 418 (6) (a) of the principal Act is amended by repealing subparagraph (ii) (as previously amended by section 23 (2) of the Resource Management Amendment Act 1996 and affected

New (Unanimous)

by section 67 (2) of the Resource Management Amendment Act 1997), and substituting the following subparagraph:

"(ii) Any lease described in section 425(1); and".

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72. New sections substituted—The principal Act is amended by repealing section 426, and substituting the following sections:

"426. **Leases and licences executed under Marine Farming Act 1971**— 10

Struck Out (Unanimous)

(1) Every lease or licence executed under section 8 of the Marine Farming Act 1971 (in this section called a 'marine farming lease or licence'), whether before or after the date of commencement of this Act, shall be deemed to be a 15 coastal permit granted under this Act on the same conditions (including those set out in any enactment, whether or not repealed or revoked by this Act, except to the extent that they are inconsistent with the provisions of this Act) by the appropriate consent authority; and the provisions of this Act 20 shall apply accordingly.

New (Unanimous)

(1) Every lease or licence executed under the Marine Farming Act 1971 (in this section called a marine farming lease or licence) that— 25

"(a) Is in force immediately before the commencement of this section; or

"(b) Expired before the commencement of this section and—

"(i) Was a marine farming lease or licence to which section 418 (6) applied at any time before the 30 commencement of this section; and

New (Unanimous)

"(ii) That related to a marine farming activity that existed immediately before the commencement of this section—

is a coastal permit granted by a consent authority under this Act on the same conditions (including those set out in any enactment whether or not repealed or revoked by this Act, except to the extent that they are inconsistent with the provisions of this Act) as applied to the marine farming lease or licence immediately before the commencement of this section or the expiry of the marine farming lease or licence, as the case may be; and the provisions of this Act apply accordingly.

"(1A) Notwithstanding **subsection (1)** of this section, where an application under section 13 of the Marine Farming Act 1971 for extension of term or period or for variation of a marine farming lease or licence has been made but not determined before the commencement of this section,—

(a) That Act continues to apply in respect of that application; and

(b) On the date that an extension or variation is granted pursuant to any such application, this section applies in respect of the lease or licence so extended or varied as if, in relation to the extension or variation, references in **subsections (1), (3), and (4)** to the commencement of this section were references to the date the extension or variation was granted.

"(2) Every lease or licence deemed to be a coastal permit by **subsection (1)** continues to be subject to any (*encumbrances (including any subleases or sublicences consented to under section 12 (1) of the Marine Farming Act 1971)*) mortgages registered against that lease or licence under section 15 (2) of the Marine Farming Act 1971; and such (*encumbrances*) mortgages are deemed to be charges over the coastal permit; and the provisions of section 122 (3) and (4) apply accordingly.

New (Unanimous)

"(2A) Where, immediately before the commencement of this section, a mortgage was registered against a lease or licence under section 15 (2) of the Marine Farming Act 1971,—

New (Unanimous)

"(a) That mortgage may, notwithstanding any time limit specified for the registration of instruments or charges under the Chattels Transfer Act 1924 or Part IV of the Companies Act 1955, be registered under the relevant Act at any time within one year after the commencement of this section, and those Acts apply accordingly as if the time for registration had been properly extended under the relevant Act; and

"(b) No fee is payable under either of those Acts in respect of the registration of the mortgage within that one-year period.

"(3) The coastal permit is deemed to—

Struck Out (Unanimous)

"(a) Authorise the holder of the permit to carry on the activities necessary for the purpose of marine farming within the area specified in the marine farming lease or licence; and

New (Unanimous)

"(a) Authorise the holder to carry on the activities necessary for the purpose of marine farming within the area specified in the marine farming lease or licence to the extent that the activities are consistent with the lease or licence that was in force immediately before the commencement of this section or the expiry of the licence, whichever is the earlier; and

"(b) Subject to **subsection (5)**, include all (*resource consents*) coastal permits that may be required under sections 12, 14, and 15 to carry on those activities;—

New (Unanimous)

but nothing in this subsection authorises any activity that would contravene the provisions of Part IVA of the Fisheries Act 1983 or any offence provision of that Act that relates to marine farming or spat catching.

"(4) Every coastal permit deemed to be granted by **subsection (1)** is deemed to have been granted for the term remaining under the marine farming lease or licence at the (*date of*) commencement of this section, together with a further 14 years; but no coastal permit expires any later than 20 years after the (*date of*) commencement of this section.

"(5) Where a marine farming lease or licence, or a variation to a lease or licence (other than a variation to which **subsection (9)** applies), authorised the holder to farm a species of fish, aquatic life, or seaweed that requires—

"(a) Feeding by artificial means; or

"(b) The discharge of chemicals into the water—

the coastal permit deemed to be granted under **subsection (1)** in respect of that lease or licence does not authorise the holder of the permit to carry out any activity, for the purposes of **paragraph (a)** or **(b)**, that contravenes section 15, except where the holder of the permit also holds—

"(c) A right or authorisation that is deemed to be a coastal permit by section 386; or

"(d) A coastal permit to do something that would otherwise contravene section 15 granted under this Act—

authorising that activity to occur.

"(6) Notwithstanding **subsection (5)**, every coastal permit deemed to be granted by **subsection (1)** is deemed to include a condition requiring the holder of the permit to apply to the relevant regional council under section 88 for a coastal permit for the purposes of **subsection (5)** and that—

"(a) Any such application must be made within 3 years after the date of commencement of this section; and

"(b) The permit holder may continue to carry out the activity to which the application relates until the application and any appeals have been determined.

Struck Out (Unanimous)

"(7) Any application for a coastal permit that is made pursuant to **subsection (6)** shall be deemed to be an application for a controlled activity and shall not be notified under section 93 unless the regional council considers that section 94 (5) applies as if this subsection was a provision in a plan.

New (Unanimous)

"(7) Any application for a coastal permit that is made pursuant to **subsection (6)**—

"(a) Is deemed to be an application for a controlled activity; and

"(b) Must not be notified under section 93 unless the regional council considers that section 94 (5) applies (as if this paragraph were a provision in a plan); and

"(c) If there is no rule in the regional coastal plan providing for the activity for which the application is made or specifying the matters over which the council has retained control in relation to such activities, must be—

"(i) Made by the applicant under section 88; and

"(ii) Determined by the regional council under section 105—

as if the regional council had reserved control over all aspects of the discharge for which the coastal permit is required.

"(7A) Any coastal permit granted pursuant to an application under **subsection (6)** must be granted for a term that expires on the same day as the related coastal permit that is deemed to be granted by **subsection (1)**.

"(8) Subject to **subsection (9)**, where a variation to a marine farming lease or licence had been granted under section 13 (1) of the Marine Farming Act 1971, that variation, so far as it authorises any activity that would otherwise contravene any of sections 12, 14, and 15, is deemed to be a condition of the marine farming lease or licence; and **subsections (1)** to **(7)** apply accordingly.

"(9) Where—

"(a) A variation to a marine farming lease or licence granted under section *(13)* 13 (1) of the Marine Farming Act 1971 allowed the holder of the lease or licence to farm different species of fish, aquatic life, or seaweed on the farm; and

"(b) The holder of the coastal permit deemed to be granted under **subsection (1)** has not yet begun to farm that different species—

nothing in this section, or in the coastal permit deemed to be granted under **subsection (1)**, authorises the holder of the deemed coastal permit to carry out any activity that has effects that are different in character, intensity, *(and)* or scale to the effects of farming the existing species, unless the holder of the permit also holds—

"(c) A permission that is deemed to be a coastal permit by section 384; or

"(d) A coastal permit granted under this Act—

authorising that activity to occur.

Struck Out (Unanimous)

"(10) Subject to **subsection (11)**, where, before the date of commencement of this section, an application had been made under section 13 of the Marine Farming Act 1971 for a variation to a lease or licence, and the application had not yet been determined,—

"(a) That application shall be determined under the Marine Farming Act 1971; and

"(b) If the application is granted, **subsections (8)** and **(9)** shall apply accordingly.

"(11) Where, before the date of commencement of this section, an application had been made under section 13 (2) of the Marine Farming Act 1971 for an extension of the term of any lease or licence, and the application had not yet been determined,—

"(a) That application shall be determined under the Marine Farming Act 1971; and

"(b) If the application is granted, any extension of term granted shall be deemed to be a condition of the lease or licence; and **subsections (1)** to **(7)** shall apply accordingly.

"(12) For the purposes of this section, unless the context otherwise requires, the terms 'aquatic life', 'fish', 'marine

farming', and 'seaweed' have the same meanings as in section 2 (1) of the Fisheries Act 1983.

New (Unanimous)

"426A. **Single preferential right for deemed permit holders to apply for new coastal permit for occupation**— (1) Where—

"(a) A person is the holder of a coastal permit to do something that would otherwise contravene section 12 (2) (a); and

"(b) That permit is a permit that is deemed to be a coastal permit by **section 426 (1)** (and is not a new coastal permit obtained subsequent to the original deemed coastal permit); and

"(c) That person is carrying on a marine farming activity in the area to which the coastal permit relates—

no person, other than the consent holder, may apply for a coastal permit to occupy the area to which that coastal permit relates unless—

"(d) The consent holder has consented, in writing, to the application; or

"(e) The coastal permit has expired and—

"(i) The consent holder has not applied for a new coastal permit for occupation of the same area for the purposes of carrying on a marine farming activity; or

"(ii) The consent holder has applied for a new coastal permit for that same area, but that application has been refused by the consent authority and all appeals against the decision of the consent authority have been withdrawn or dismissed; or

"(f) The coastal permit has lapsed under section 125; or

"(g) The coastal permit has been cancelled under section 126.

"(2) For the purposes of **subsection (1)** the term 'marine farming' has the same meaning as in section 2 (1) of the Fisheries Act 1983."

. . . . .

Struck Out (Unanimous)

74. Recommendations and decisions on requirements—Clause 9 of the First Schedule to the principal Act (as substituted by section 213 of the Resource Management Amendment Act 1993) is hereby amended by adding the words "or section 191A".

. . . . .

Struck Out (Unanimous)

82. Repeal of Marine Farming Act 1971—(1) The following enactments are hereby repealed:

(a) The Marine Farming Act 1971:

(b) The Marine Farming Amendment Act 1975:

(c) The Marine Farming Amendment Act 1976:

(d) So much of the Schedule to the Territorial Sea and Exclusive Economic Zone Act 1977 as relates to the Marine Farming Act 1971:

(e) The Marine Farming Amendment Act 1977:

(f) So much of Part III of the Third Schedule to the Local Government Amendment Act 1979 as relates to the Marine Farming Act 1971:

(g) So much of the First Schedule to the National Parks Act 1980 as relates to the Marine Farming Act 1971:

(h) The Marine Farming Amendment Act 1983:

(i) The Marine Farming Amendment Act 1987:

(j) So much of the Second Schedule to the Conservation Act 1987 as relates to the Marine Farming Act 1971:

(k) So much of Part A of the First Schedule to the State-Owned Enterprises Amendment Act 1987 as relates to the Marine Farming Act 1971:

(l) The Marine Farming Amendment Act 1990:

(m) So much of Part I of the Third Schedule to the Crown Minerals Act 1991 as relates to the Marine Farming Act 1971:

(n) The Marine Farming Amendment Act 1992:

(o) The Marine Farming Amendment Act 1993.

Struck Out (Unanimous)

(2) So much of Part I of the Eighth Schedule to the principal Act as relates to the Marine Farming Act 1971 is hereby repealed.

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New (Unanimous)

Repeal of Marine Farming Act 1971

83c. Repeal of Marine Farming Act 1971—(1) The following enactments are repealed:

(a) The Marine Farming Act 1971:

(b) The Marine Farming Amendment Act 1975:

(c) The Marine Farming Amendment Act 1976:

(d) So much of the Schedule of the Territorial Sea and Exclusive Economic Zone Act 1977 as relates to the Marine Farming Act 1971:

(e) The Marine Farming Amendment Act 1977:

(f) So much of Part III of the Third Schedule of the Local Government Amendment Act 1979 as relates to the Marine Farming Act 1971:

(g) So much of the First Schedule of the National Parks Act 1980 as relates to the Marine Farming Act 1971:

(h) The Marine Farming Amendment Act 1983:

(i) The Marine Farming Amendment Act 1987:

(j) So much of the Second Schedule of the Conservation Act 1987 as relates to the Marine Farming Act 1971:

(k) So much of Part A of the First Schedule of the State-Owned Enterprises Amendment Act 1987 as relates to the Marine Farming Act 1971:

(l) The Marine Farming Amendment Act 1990:

(m) So much of Part I of the Third Schedule of the Crown Minerals Act 1991 as relates to the Marine Farming Act 1971:

(n) The Marine Farming Amendment Act 1992:

(o) The Marine Farming Amendment Act 1993.

(2) So much of Part I of the Eighth Schedule of the principal Act as relates to the Marine Farming Act 1971 is repealed.

New (Unanimous)

84. Consequential amendments—(1) The enactments specified in the **Schedule** are amended in the manner indicated in that schedule.

(2) Regulation 2 of the Freshwater Fish Farming Regulations 1983 (S.R. 1983/278) is amended by omitting from the definition of "transfer" the words "a leased or licensed area within the meaning of the Marine Farming Act 1971", and substituting the words "an area subject to a marine farming permit issued under the Fisheries Act 1983".

84A. Regulations revoked—The following regulations are revoked:

(a) The Marine Farming (Fees) Regulations 1997 (S.R. 1997/192):

(b) The Rock Oyster Farming Regulations 1964 (S.R. 1964/207):

(c) The Rock Oyster Farming Regulations 1964, Amendment No. 1 (S.R. 1966/142):

(d) The Rock Oyster Farming Regulations 1964, Amendment No. 2 (S.R. 1975/192).

85. Marine farming leases and licences deemed to be marine farming permits under Fisheries Act 1983—(1) Every lease or licence executed under section 8 of the Marine Farming Act 1971 (in this section called a "marine farming lease or licence") is on the commencement of this section deemed—

(a) To be a marine farming permit issued under section 67J of the Fisheries Act 1983; and

(b) To have been issued on the same terms and conditions (including those set out in any enactment, whether or not repealed or revoked by this Act, and including any variation or extension of term or period granted under section 13 of the Marine Farming Act 1971) as applied to the marine farming lease or licence immediately before the commencement of this section, subject to the following:

(i) The marine farming permit is deemed to have been granted for the same term and with the same expiry date (as determined under **section 426 (4)** of the

New (Unanimous)

principal Act) as the coastal permit that is deemed by **section 426 (1)** of the principal Act to exist in respect of the relevant lease or licence; and

(ii) No term or condition of the marine farming lease or licence is of any effect after the commencement of this section to the extent that it requires the payment of any rent or annual licence fee authorised under the Marine Farming Act 1971; and

(iii) No term or condition of the marine farming lease or licence is of any effect after the commencement of this section to the extent that it is inconsistent with any provision of Part IVA of the Fisheries Act 1983;—

and the provisions of the Fisheries Act 1983 apply accordingly.

(2) Notwithstanding **subsection (1)** of this section, where an application under section 13 of the Marine Farming Act 1971 for extension of term or period or for variation of a marine farming lease or licence has been made but not determined before the commencement of this section,—

(a) That Act continues to apply in respect of that application; and

(b) On the date that an extension or variation is granted pursuant to any such application, **subsection (1) (b)** of this section applies in respect of the lease or licence so extended or varied as if, in relation to the extension or variation, references in that subsection to the commencement of this section were references to the date the extension or variation was granted.

(3) Where forfeiture action in respect of any marine farming lease or licence has been commenced under section 14 of the Marine Farming Act 1971 but not completed before the commencement of this section,—

(a) That Act continues to apply in respect of that forfeiture action as if this Act had not been passed; and

(b) If and when the lease or licence is forfeit on completion of the forfeiture action, **subsection (1)** of this section is deemed never to have applied in respect of the lease or licence.

New (Unanimous)

(4) Nothing in this section authorises the holder of a lease or licence that is deemed to be a marine farming permit to carry out any activity that would contravene any of sections 12, 14, and 15 of the principal Act.

86. Marine farm lessees and licensees deemed to hold spat catching permit—(1) Every person who immediately before the commencement of this section was the holder of a lease or licence executed under section 8 of the Marine Farming Act 1971 is, subject to **subsection (3)** of this section, deemed to hold a spat catching permit issued under section 67Q of the Fisheries Act 1983.

(2) The spat catching permit—

(a) Is deemed to have been issued for a period of 5 years commencing with the date of commencement of this section; and

(b) Subject to **subsection (3)** of this section, applies in respect of spat of the species of fish, aquatic life, or seaweed specified in the lease or licence immediately before the commencement of this section (or, where appropriate, on the date a variation of the kind referred to in **section 85 (2)** of this Act is granted); and

(c) Applies only in respect of spat that has settled out of the water column while in the larval stage and has become attached to farm structures or introduced spat catching materials; and

(d) Applies only in respect of the area within which marine farming was authorised under the lease or licence.

(3) Where a lease or licence that is deemed by **section 85** of this Act to be a marine farming permit authorised the farming of a species specified in **section 67L (1) (c)** of the Fisheries Act 1983, the holder of the lease or licence is not deemed to hold a spat catching permit in respect of spat of that species.

(4) Notwithstanding anything in section 67S (3) of the Fisheries Act 1983, where immediately before the commencement of this section there was in existence any assignment, sublease, or other disposition of a lease or licence referred to in **subsection (1)** of this section that entitled a person other than the holder to carry on marine farming activities under the lease or licence, that other person is deemed, unless

New (Unanimous)

and until the holder of the marine farming permit arising from the lease or licence otherwise notifies the chief executive in writing, to be authorised to take spat under the spat catching permit referred to in **subsection (1)** of this section for so long as the person continues to be entitled (during the life of the spat catching permit) to farm fish, aquatic life, or seaweed as an assignee, sublessee, or otherwise under the marine farming permit.

PART XIV

AMENDMENTS TO FISHERIES ACT 1983

87. Part to be read with Fisheries Act 1983—This **Part** is part of the Fisheries Act 1983 (in this **Part** referred to as the principal Act).

88. Interpretation—Section 2 (1) of the principal Act is amended by repealing the definition of the term "Director-General", and substituting the following definition:

" 'Director-General' means the chief executive for the time being of the Ministry that is, with the authority of the Prime Minister, for the time being responsible for the administration of this Act:".

89. Interpretation—marine farming—Section 67I of the principal Act (as inserted by section 6 of the Fisheries Amendment Act 1993) is amended by inserting, in their appropriate alphabetical order, the following definitions:

" 'Holder', in relation to a subpermit, means the person to whom the subpermit is granted or transferred, as the case may be:

" 'Subpermit' has the meaning given by **section 67PD (1)**:".

90. Marine farming permit—(1) Section 67J of the principal Act (as inserted by section 6 of the Fisheries Amendment Act 1993) is amended by repealing subsection (7), and substituting the following subsections:

"(7) The Director-General may by notice in writing require the applicant to supply, within such time as the Director-General may specify,—

New (Unanimous)

"(a) Such plans or survey information relating to the proposed permit area as the Director-General may specify; and

"(b) Such other additional information as may be necessary or desirable to enable the Director-General to assess whether the application would have an undue adverse effect on fishing or the sustainability of any fisheries resource,—

and the Director-General may postpone the processing or final determination of the application until the information or plans are received.

"(7A) Any requirement for additional information under **subsection (7) (b)** must be accompanied by a statement of the reasons why the information is required."

(2) Section 67J of the principal Act (as so inserted) is amended by inserting, after subsection (8), the following subsections:

"(8A) For the avoidance of doubt, the issue of whether or not any marine farming activity has or would have an adverse effect on the availability of plankton for other marine farmers or for other aquatic life—

"(a) Is a matter for the Director-General to determine on an application for a permit under this Part, or in relation to the conditions to be attached to any such permit; and

"(b) Must not be considered by any consent authority in the course of determining any application for a coastal permit or any other consent under the Resource Management Act 1991, or determining the conditions to be attached to any such permit or consent.

"(8B) Before issuing a marine farming permit the Director-General must consult with such persons or organisations as the Director-General considers are representative of persons having an interest in fishing or the effects of marine farming in the area concerned, including marine farmers and Maori, environmental, commercial, and recreational interests.

"(8C) The Director-General must commence the consultation required by **subsection (8B)** within 20 working days after the receipt of the application for the marine farming permit under subsection (4).

New (Unanimous)

"(8D) The Director-General must determine whether or not to issue a marine farming permit not later than 20 working days after the later of—

"(a) The completion of the consultation required by **subsection (8B)**; and

"(b) If appropriate, the receipt by the Director-General of any plans or information required from the applicant under **subsection (7)**."

91. Effect of marine farming permit—(1) Section 67L(1) of the principal Act (as inserted by section 6 of the Fisheries Amendment Act 1993) is amended by omitting from paragraph (b)(ii) the expression "permit—", and substituting the expression "permit; and".

(2) Section 67L(1) is amended by inserting, after paragraph (b), the following paragraph:

"(c) Subject to **subsection (4)** of this section,—

"(i) To take from within the permit area any spat of blue mussel *Mytilus galloprovincialis*, green mussel *Perna canaliculus*, rock oyster *Saccostrea glomerata*, Pacific oyster *Crassostrea gigas*, or scallop *Pecten novaezelandiae*; and

"(ii) To sell, transfer, or dispose of that spat to any of the persons specified in section 67R(2) of this Act,—".

(3) Section 67L is amended by inserting at the beginning of subsection (3) the words "Except as provided in **subsection (1)(c)**,".

(4) Section 67L is amended by adding the following subsection:

"(4) **Subsection (1)(c)** applies to authorise the taking and the sale, transfer, and disposal of spat only to the extent that—

"(a) The spat is of a species authorised to be farmed under the marine farming permit; and

"(b) The spat has settled out of the water column while in the larval stage and has become attached to farm structures or introduced spat catching materials."

92. Transfer of permits—The principal Act is amended by repealing section 67M (as inserted by section 6 of the Fisheries Amendment Act 1993).

New (Unanimous)

93. Lapse, cancellation, and surrender of permit—The principal Act is amended by repealing section 67O (as inserted by section 6 of the Fisheries Amendment Act 1993).

94. New sections inserted—The principal Act is amended by inserting, after section 67P (as inserted by section 6 of the Fisheries Amendment Act 1993), the following sections:

"67PA. **Amendment of description of permit area**—(1) If the Director-General is not satisfied that the description of the permit area in any marine farming permit or spat catching permit is reasonably sufficient to identify the area, the Director-General may, by notice in writing to the permit holder,—

"(a) Notify the permit holder of the amendment that the Director-General proposes to make to the description; and

"(b) In the case of an amendment that is of more than a minor or technical nature, request the permit holder's consent to the amendment.

"(2) If—

"(a) The permit holder consents to the amendment; or

"(b) The amendment is of a minor or technical nature only; or

"(c) No reply to the Director-General's request for consent has been received within 3 months after the giving of the notice,—

the Director-General may prepare and endorse on or attach to the holder's copy of the permit and the copy retained by the Director-General the amended description of the permit area.

"(3) Where an amended description of the permit area is endorsed on or attached to any instrument pursuant to **subsection (1)**, that description is for all purposes deemed to be the correct description of the permit area.

"67PB. **Properties of permits and subpermits**—(1) A marine farming permit is neither real nor personal property.

"(2) A marine farming permit may be—

"(a) Transferred in accordance with **section 67PC**:

"(b) Subpermitted in accordance with **section 67PD**:

"(c) Charged in accordance with **section 67PE**.

"(3) A marine farming subpermit—

New (Unanimous)

"(a) Is neither real nor personal property:

"(b) May be transferred or charged in accordance with **sections 67PC and 67PE**, but may not be further subpermitted.

"(4) Except as expressly provided otherwise in the conditions of a marine farming permit or subpermit,—

"(a) On the death of the holder of a marine farming permit or subpermit, the permit or subpermit vests in the personal representative of the holder as if it were personal property, and he or she may deal with the permit or subpermit to the same extent as the holder would have been able to do; and

"(b) On the bankruptcy of an individual who is the holder of a marine farming permit or subpermit, the permit or subpermit vests in the Official Assignee as if it were personal property, and he or she may deal with the permit or subpermit to the same extent as the holder would have been able to do; and

"(c) A marine farming permit or subpermit must be treated as property for the purposes of the Protection of Personal and Property Rights Act 1988.

"67PC. **Transfer of permit or subpermit**—(1) A marine farming permit may be transferred only together with the coastal permit (or certificate of compliance) to which it relates, when the coastal permit (or certificate of compliance) is transferred pursuant to section 135 of the Resource Management Act 1991.

"(2) Except as otherwise expressly provided in the conditions of a marine farming subpermit, the holder of the subpermit may transfer it to another person.

"(3) A transfer under this section of the holder's interest in a marine farming permit or subpermit has no effect for the purposes of this Act or the Fisheries Act 1996 until written notice of the transfer is given to the Director-General.

"67PD. **Marine farming subpermits**—(1) The holder of a marine farming permit may, by way of a subpermitting of rights that falls short of a full transfer of the permit, grant to another person any rights of the permit holder to farm fish, aquatic life, or seaweed within the permit area.

New (Unanimous)

"(2) No such subpermit may be granted without the prior written consent of the Director-General, and no subpermit has effect for the purposes of this Act until its granting is notified in writing to the Director-General.

"(3) No such subpermit may be further subpermitted, but a subpermit may be transferred or charged in accordance with **sections 67PC and 67PE.**

"(4) The holder of a subpermit has, to the extent of the interest held by that holder under the marine farming permit, the same rights and obligations under the provisions of—

"(a) Sections 67J, 67K, 67L, and 67P; and

"(b) The other Parts of this Act; and

"(c) Any applicable provisions of the Fisheries Act 1996—

as the holder of the marine farming permit, and those provisions (including any offence provisions) apply accordingly with any necessary modifications.

"67PE. **Permit or subpermit may be charged**—(1) The holder of a marine farming permit or subpermit may grant a charge over that permit or subpermit as if it were personal property, but the permit or subpermit may only be transferred to the chargee, or by or on behalf of the chargee, to the same extent as it could be so transferred by the holder.

"(2) Subject to the provisions of this Part, the Chattels Transfer Act 1924, Part IV of the Companies Act 1955, and the Companies (Registration of Charges) Act 1993 apply in relation to a marine farming permit or subpermit as if—

"(a) The permit or subpermit were a chattel within the meaning of the Chattels Transfer Act 1924; and

"(b) The permit or subpermit were situated in the Provincial District in which the activity permitted by the permit or subpermit may be carried out (or, where it may be carried out in more than one Provincial District, in any such Provincial District).

"(3) Notwithstanding **subsections (1) and (2)**, or any of the enactments specified in **subsection (2)**, no charge over a marine farming permit or subpermit is valid or has any effect unless and until the Director-General is notified in writing of the charge.

New (Unanimous)

"(4) Where, immediately before the commencement of this section, a mortgage was registered against a lease or licence under section 15 (2) of the Marine Farming Act 1971—

"(a) That mortgage may, notwithstanding any time limit specified for the registration of instruments or charges under the Chattels Transfer Act 1924 or Part IV of the Companies Act 1955, be registered under the relevant Act at any time within one year after the commencement of this section, and those Acts apply accordingly as if the time for registration had been properly extended under the relevant Act; and

"(b) No fee is payable under either of those Acts in respect of the registration of the mortgage within that one-year period.

"67PF. **Lapse, cancellation, and forfeiture of permits and subpermits**—(1) A marine farming permit is deemed to have lapsed when the coastal permit to which it relates lapses pursuant to section 125 of the Resource Management Act 1991.

"(2) A marine farming permit is deemed to be cancelled when the coastal permit to which it relates is cancelled pursuant to section 126 of the Resource Management Act 1991 or by the Environment Court pursuant to its powers under Part XII of the Resource Management Act 1991.

"(3) Where a marine farming permit is deemed at any time to have lapsed or to be cancelled under this section, any subpermit of that permit is also deemed to have lapsed or to be cancelled at that time.

"(4) Where a marine farming permit is forfeit under this Act or the Fisheries Act 1996, any subpermit of that permit is also forfeit.

"67PG. **Surrender of permits**—(1) A marine farming permit is deemed to be surrendered if the coastal permit to which it relates is surrendered pursuant to section 138 of the Resource Management Act 1991.

"(2) Subject to this section, the holder of a marine farming permit may at any time surrender the permit by forwarding

New (Unanimous)

notice in writing to that effect, together with the permit, to the Director-General.

"(3) The holder of a marine farming permit—

"(a) That is subject to a charge; or

"(b) In respect of which a subpermit has been granted—

may not surrender the permit without the consent of all persons holding charges or subpermits in respect of the permit.

"(4) The written notice required by **subsection (2)** must either—

"(a) Include a declaration by the permit holder that the permit is not subject to any charge or subpermit; or

"(b) Include—

"(i) A statement that the permit is subject to one or more specified charges or subpermits but that all charge holders and holders of subpermits consent to the surrender; and

"(ii) The written consent of each charge holder and holder of a subpermit to the surrender of the permit.

"(5) Where the Director-General is satisfied either that the permit is not subject to a charge or subpermit or that the holder of the marine farming permit has complied with **subsection (4)**,—

"(a) The Director-General must endorse on the notice and the register the date on which the notice was received; and

"(b) The marine farming permit, and any subpermit of that permit, ceases to have effect from that date.

"(6) The surrender of a permit under this section does not affect the permit holder's liability, or the liability of any subpermit holder,—

"(a) To pay any fees or other money payable by the permit or subpermit holder in accordance with the provisions of this Act or the Fisheries Act 1996; or

"(b) To perform any obligation required to be performed by the permit or subpermit holder by or under any provision of this Act or the Fisheries Act 1996; or

"(c) For any act or omission—

where such liability arose before the date on which the permit ceased to have effect.

New (Unanimous)

"(7) Where the Director-General has registered the surrender of a marine farming permit under **subsection (5)**, the Director-General must notify the consent authority that granted the coastal permit to which the marine farming permit relates."

95. Authority to catch spat—(1) Section 67Q(1) of the principal Act (as inserted by section 6 of the Fisheries Amendment Act 1993) is amended by inserting, after the words "spat catching permit issued under this section", the words "or under the authority of a marine farming permit to the extent specified in **section 67L (1) (c) and (4)**".

(2) Section 67Q (4) of the principal Act (as so inserted) is amended by omitting the expression "(8)", and substituting the expression "**(7A), (8), (8A), (8B)**".

96. New sections inserted—The principal Act is amended by inserting, after section 67S (as inserted by section 6 of the Fisheries Amendment Act 1993), the following sections:

"67T. **Marine farm closing orders**—(1) If at any time the Minister is satisfied on reasonable grounds that the whole or any part of a marine farming permit area used in the farming of fish, aquatic life, or seaweed, or any area in respect of which a spat catching permit has been issued, is—

"(a) Diseased; or

"(b) Infected by marine pests; or

"(c) Contaminated or likely to be contaminated by sewage or other cause—

to such an extent as to render fish, aquatic life, or seaweed in the area (whether farmed or not) unfit for human consumption or dangerous to human life, or to such an extent that the farming of fish, aquatic life, or seaweed or the taking of spat in the area is likely to be prejudiced, the Minister may, by notice in writing to the holder of the marine farming permit or spat catching permit, declare the area to be so diseased, infected by marine pests, or contaminated or likely to be contaminated.

"(2) Where the Minister makes a declaration under **subsection (1)**, the Minister may also, in the same or a subsequent notice in writing to the permit holder, order that—

"(a) No fish or aquatic life or seaweed be removed from the area while the notice remains in force; or

New (Unanimous)

"(b) Fish or aquatic life or seaweed may be removed from the area only under such conditions as the Minister specifies in the notice; or

"(c) Fish or aquatic life or seaweed must be removed from the area, or be destroyed or disposed of, in such manner and within such time as the Minister specifies in the notice.

"(3) Any such order may require the permit holder to take specified steps for—

"(a) The purification or treatment of fish or aquatic life or seaweed farmed in the permit area:

"(b) The eradication from the permit area of the relevant disease, pests, or cause of contamination:

"(c) The destruction of diseased or contaminated fish or aquatic life or seaweed in the permit area, or its removal from that area and its disposal or destruction in a specified place or places.

"(4) The Minister may rescind or vary any declaration or order made under this section.

"(5) Every permit holder who fails to comply with an order given under this section commits an offence and is liable on conviction to a fine not exceeding $100,000.

"67U. **No compensation to be paid**—No compensation may be paid by the Crown to any person for or in respect of the removal or destruction or disposal of any fish, aquatic life, or seaweed pursuant to **section 67T or section 80AA**."

97. Powers of Fishery Officer—Section 79 of the principal Act is amended by inserting, after subsection (1), the following subsection:

"(1A) Any Fishery Officer, and any officer in the employment of the Crown authorised by the Director-General, may, at all reasonable times, enter and inspect any marine farming permit area or spat catching permit area for the purpose of ensuring that the provisions of this Act and the terms and conditions of the marine farming permit or spat catching permit are not being contravened."

New (Unanimous)

98. Powers in relation to diseased and contaminated fish, etc—The principal Act is amended by inserting, after section 80, the following section:

"80AA. If specifically authorised by the Director-General, a Fishery Officer or other officer in the employment of the Crown who has entered any marine farming permit area may take such actions (including the removal or destruction of any diseased or contaminated fish, aquatic life, or seaweed) as are considered necessary for the purpose of ensuring that the provisions of any order made under **section 67T** are complied with."

99. Injury or damage to marine farm or spat catching area—Section 101A of the principal Act (as inserted by section 8 of the Fisheries Amendment Act 1993) is amended by repealing subsection (2), and substituting the following subsection:

"(2) Every person (unless authorised under this Act) commits an offence, and is liable to a fine not exceeding $5,000, who takes, removes, disturbs, or interferes with the spat of any fish, aquatic life, or seaweed that—

"(a) Is specified in a spat catching permit issued under section 67Q, or is spat to which **section 64L (4)** applies; and

"(b) Is in the exclusive and continuous possession or control of the holder of the spat catching permit or marine farming permit within the area to which the permit relates."

100. Obstructing holder of marine farming or spat catching permit—Section 101B of the principal Act (as inserted by section 8 of the Fisheries Amendment Act 1993) is amended by repealing subsection (2), and substituting the following subsection:

"(2) Every person commits an offence, and is liable to a fine not exceeding $5,000, who obstructs, hinders, or prevents any person—

"(a) Who holds a spat catching permit issued under section 67Q, or a marine farming permit that by

virtue of **section 67L (1) (c)** and **(4)** authorises the taking of spat; or

"(b) Who is employed by or acting under the authority of a person who holds such a permit—

from catching or holding spat of the species specified in the spat catching permit or marine farming permit from the area to which the permit relates."

101. Removing diseased or contaminated fish, aquatic life, or seaweed—The principal Act is amended by inserting, after section 101B, the following section:

"101C. Every person commits an offence, and is liable on conviction to a fine not exceeding $100,000, who, without the prior consent in writing of the Director-General,—

"(a) Removes diseased or contaminated fish, aquatic life, or seaweed from one marine farm permit area to another marine farm permit area; or

"(b) Having removed diseased or contaminated fish, aquatic life, or seaweed from any marine farm permit area, places or casts the fish, aquatic life, or seaweed into any tidal water outside the area."

102. Regulations—(1) Section 89 (1) of the principal Act is amended by inserting, after paragraph (h), the following paragraphs:

"(ha) Providing for the management and control of the well-being of fish, aquatic life, or seaweed in the area farmed under a marine farming permit:

"(hb) Regulating the removal or sale of fish, aquatic life, or seaweed farmed under a marine farming permit:

"(hc) Authorising the Minister to prescribe steps to be taken by any holder of a marine farming permit or spat catching permit to keep the permit area free from disease, infection by marine pests, and contamination by sewage or other cause:

"(hd) For the purpose of ensuring any structure, longline, or other equipment does not have an undue adverse effect on fishing or the sustainability of any fisheries resource, prescribing matters in relation to the design, construction, and positioning of structures,

New (Unanimous)

longlines, and other equipment to be used in any area subject to a marine farming permit or a spat catching permit, or prohibiting the use in any such area of any structure, longline, or other equipment:".

(2) Section 89 of the principal Act is amended by inserting, after subsection (1C), the following subsection:

"(1D) Without limiting anything in **subsection (1)**, any regulations made under any of **paragraphs (ha) to (i)** of that subsection in relation to marine farming or spat catching, or marine farming permits or spat catching permits, may prescribe different fees for different species of fish, aquatic life, or seaweed, and different fees for different areas."

New (Unanimous)

SCHEDULE

Section 84

AMENDMENTS CONSEQUENTIAL UPON REPEAL OF MARINE FARMING ACT 1971

Enactment	Amendment
1971, No. 15—The Marine Reserves Act 1971 (R.S. Vol. 22, p. 751)	By omitting from section 4 (1) the words "lease or licence under the Marine Farming Act 1971", and substituting the words "marine farming permit under the Fisheries Act 1983".
1974, No. 45—The Farm Ownership Savings Act 1974 (R.S. Vol. 34, p. 497)	By omitting from section 2 (2) (c) the words "lease or licence granted under the Marine Farming Act 1971", and substituting the words "marine farming permit issued under the Fisheries Act 1983".
1983, No. 14—The Fisheries Act 1983 (R.S. Vol. 27, p. 137)	By adding to the definition of the term "marine farming permit" in section 2 (1) (as inserted by section 2 (1) of the Fisheries Amendment Act 1993) the words "; and includes a lease or licence deemed by **section 85** of the **Resource Management Amendment Act (No. 3) 1995** to be a permit issued under section 67J of this Act:".
	By adding to the definition of the term "spat catching permit" in section 2 (1) (as inserted by section 2 (2) of the Fisheries Amendment Act 1993) the words "; and includes a spat catching permit that is deemed to be held by a person under **section 86** of the **Resource Management Amendment Act (No. 3) 1995**:".
	By omitting from section 30 (4) the words "leased or licensed area as defined in the Marine Farming Act 1971", and substituting the words "area subject to a marine farming permit or a spat catching permit".
	By omitting from each of subsections (1), (2), and (2) (ba) of section 67A the words "permit issued under section 67J of this Act, or the holder of a lease or licence under the Marine Farming Act 1971" (as inserted by section 5 of the Fisheries Amendment Act 1993), and substituting in each case the words "marine farming permit".

New (Unanimous)

SCHEDULE—*continued*

AMENDMENTS CONSEQUENTIAL UPON REPEAL OF MARINE FARMING ACT 1971—*continued*

Enactment	Amendment
1983, No. 14—The Fisheries Act 1983 (R.S. Vol. 27, p. 137)—*continued*	By omitting from section 67I (as also so inserted) the definition of the term "marine farming lease or licence". By repealing section 67J (1) (a) (as also so inserted). By omitting from section 67Q (1) (as also so inserted) the words "or under the authority of the Marine Farming Act 1971". By repealing section 67Q (2) (a) (iii) (as also so inserted). By omitting from section 67Q (5) (as also so inserted) the words ", or under section 14E of the Marine Farming Act 1971,". By repealing section 67R (2) (c) (as also so inserted). By repealing section 88 (3). By omitting from section 107EA (1) (a) (as inserted by section 3 of the Fisheries Amendment Act 1994) the words "or the Marine Farming Act 1971". By repealing section 107EA (2) (f) (as so inserted). By omitting from both subsection (1) (d) (i) (A) and subsection (7) (a) of section 107EC (as also so inserted) the words "or the Marine Farming Act 1971".

WELLINGTON, NEW ZEALAND: Published under the authority of the New Zealand Government—1999

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